

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



**CALIFORNIA DRY BEAN RESEARCH AND
MARKETING PROGRAM**

Effective June 22, 1979
Incorporating Amendments Through January 5, 2001

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Program, the following terms shall have the following meanings:

1. "Act" means the California Marketing Act of 1937, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code, as Amended, or as the same may be amended hereafter.

2. "Department" means the Department of Food and Agriculture of the State of California, formerly the Department of Food and Agriculture. (Amended 5/10/95)

3. "Dry Bean Research and Marketing Program", "Marketing Program", "Marketing Order", "Program", or "Order" are synonymous and mean, unless the context indicates otherwise, this Marketing Order which is issued by the Department pursuant to the provisions of the Act.

4. "California Dry Bean Advisory Board", "Advisory Board", and "Board", are synonymous and mean the administrative agency created pursuant to Article II of this Program.

5. "Varietal Council" and "Council" are synonymous and mean an agency which may be created pursuant to Article III of this Program to represent producers of major and miscellaneous varietal categories and to conduct the activities of this Program which are specifically delegated to and reserved for said Councils.

6. "Area" means the State of California.

7. "Person" means an individual, partnership, firm, corporation, association, subsidiary, affiliate, or other business unit, or any State agency which engages in the commercial production or handling of dry beans.

8. "Dry Beans" or "Beans" are synonymous and mean all dry beans, as defined by the United States Department of Agriculture in the United States Standards for Beans, or as the Standards may be amended in the future, which are grown in the State of California and marketed commercially; provided, that beans grown and marketed for use as garden variety seed or fresh vegetable seed shall be excluded; provided, further, that there shall be no such exclusion for any lima bean variety; provided, still further, that the Board with the approval of the Department, may prescribe procedures to be followed to give assurance that beans declared as intended for garden variety seed or fresh vegetable seed purposes are so used.

9. "Major Varieties" or "Major Varietal Categories" synonymously refer to dry beans and shall include Baby Limas, Blackeyes, Red Kidneys, Garbanzos, Large Limas, and Miscellaneous, which is composed of all other varieties of dry beans, as separate varieties or as varietal groups of two or more of said varieties; that any variety may be removed from or added to the "Miscellaneous Varietal Category" by minor amendment procedures pursuant to this Program. (Amended 1/05/2001)

10. "Producer" means any person engaged within this State in the business of producing, or causing to be produced for market, dry beans in a quantity of any variety of beans of two thousand (2,000) pounds or more.

11. "Warehouseman" means any person who is a processor within the meaning of the Act and who is engaged within the State in receiving, cleaning, sorting, grading, placing into containers, storing, or otherwise preparing beans for market.

12. "Dealer" means any person who is a distributor within the meaning of the Act and who is engaged in selling, marketing or distributing any beans which he has produced, or purchased or acquired from a producer, or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as defined in the Act, except such retailer who purchases or acquires from or handles on behalf of any producers, beans not theretofore subjected to regulation by this Program.

13. "Handler" means any warehouseman or dealer as defined in this Article.

14. "To Handle" or "Handling" means to perform any of the functions of a handler.

15. "Preparation for Marketing" means the removal of beans from the point of production or from warehouses or other storage facilities or locations within the State of California, whether or not such beans have been cleaned, sorted, or graded, for the purpose of entering such beans into the channels of trade whether for marketing or for cleaning, sorting, grading, or storing, or otherwise handling the same.

16. "Market" unless the context indicates otherwise, shall be synonymous with the phrase "to market" and shall mean to sell, ship, distribute, or otherwise handle beans.

17. "Sell" means to offer beans for sale, expose for sale, or have beans in possession for sale, exchange, barter, or trade.

18. "Ship" means to transport or cause to be transported, beans by any means whatsoever.

19. "Marketing Season" or "Fiscal Period" means a twelve-month period beginning April 1 of any year and extending through March 31 of the following year. (Amended 5/10/95)

ARTICLE II

DRY BEAN ADVISORY BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE

1. A Board to be known as the Dry Bean Advisory Board is hereby established to assist the Department in the administration of this Program and to conduct all activities not specifically delegated by said Board to Varietal Councils, subcommittees, consultants, or employees. Said Board shall consist of nineteen members and their respective alternate members. Twelve members of the Board shall be producers. Seven members shall be handlers and one member shall be neither a producer nor a handler

and may be recommended by the Board and appointed by the Department to represent the general public. All of said members shall be appointed by the Department after due consideration is given to those individuals nominated or otherwise recommended for appointment as a result of procedures set forth below in Subsections 4 and 5 of this Article II. No natural person shall hold more than one member or alternate member position on the Advisory Board. (Amended 1/5/2001)

2. There shall be an alternate member for each member of the Advisory Board. An alternate shall serve for the same term and shall be selected in the same manner as the member for whom he is the alternate.

3. Except for the initial Advisory Board established under this amended Program, the term of office of members and alternate members shall begin on the first day of March of the year in which they are appointed and shall continue at the pleasure of the Department for a period of three (3) years and until their successors have been selected, appointed and have qualified (Amended 5/10/95)

4. Producer representation of the Dry Bean Advisory Board shall be by varietal category. Each major varietal category, established pursuant to Article III of this Program shall be represented by two (2) members and two (2) alternate members on the Advisory Board, Those nominated to represent each major varietal category on the Board shall be selected by applicable procedures as set forth in Article III of this Program.

5. Handler representation on the Dry Bean Advisory Board shall be without regard to variety or varietal category and shall be composed of three (3) members and their alternates representing dealers, and four (4) members and their alternates representing warehousemen. Both dealers and warehousemen representation shall be divided between cooperative and independent organizations based on the approximate percentage of the total dry bean volume handled by each of the two groups. Every three (3) years, prior to handler nominations, the Department shall determine said approximate percentage and appoint from those nominated the number of dealers and warehousemen representing cooperative organizations and the number of dealers and warehousemen representing independent organizations to be commensurate with such approximate percentage. (Amended 5/10/95)

6. In the event that additions to or deletions from the Major Varietal Category are made pursuant to Article I, Section A, Subsection 9 and Article III, Section M of this Program, the Board may recommend to the Department, and the Department may approve modifications of Board membership needed to comply with Article II, Section A, Subsection 4; provided, that the approximate proportion of producer members to handler members on the Advisory Board shall be maintained. Any said modifications of Board membership shall be by minor amendment as defined in the Act.

Section B. INITIAL ADVISORY BOARD

1. The initial members and their respective alternates of the Advisory Board shall serve from the effective date of this amended Dry Bean Research and Marketing Program through July 31, 1981, or until their successors have been appointed and have qualified.

2. Nominations of producer members and their alternate members eligible to serve on the initial Advisory Board shall be received at the public hearing(s) held on this Marketing Program; provided, that such nominations shall be in accordance with the provisions of this Article II as to varietal representation.

3. Nominations of handlers eligible to serve on the initial Advisory Board shall be received at the public hearing(s) held on this Marketing Program provided that such nominations shall be in accordance with the provisions of Section A of this Article II as to occupational and other applicable requirements.

4. The Department shall appoint initial handler and producer members and their alternates from the nominations received at the public hearing(s) on this Marketing Program; provided, such appointments shall be in accordance with the provisions of this Article II as to varietal representation and occupational and other applicable requirements.

Section C. NOMINATION AND APPOINTMENT OF SUCCEEDING MEMBERS AND ALTERNATE MEMBERS OF THE ADVISORY BOARD

1. During or reasonably prior to the month of January 1981, and every three (3) years thereafter during the period when this Program is in operation, the Department shall cause meetings to be held for the purpose of receiving nominations of producers and handlers eligible to serve as members and alternate members of the Advisory Board. The times and places of these meetings shall be as deemed appropriate and necessary by the Department to carry out the provisions set forth in this Subsection 1 or Subsection 2 of this Section C. The Board may make recommendations to the Department with respect to these nomination meetings and other procedures for selecting nominees for the Advisory Board. In any event, all producers and handlers eligible to participate shall be notified by mail of the times and places of meetings when called to receive nominations for members and alternate members on the Advisory Board. (Amended 5/10/95)

2. Producer members and their alternate members on the Board may be selected for nomination and appointment by the Department in either of two ways:

a. For those major varietal categories whose producers have received approval of the Board and the Department to establish a Varietal Council, the Department shall hold nomination meetings at locations convenient to the producers in each major production area of the State to receive nominations for the persons to serve as members and alternate members of said Council. At each meeting the Department shall receive nominations for the proportionate number of the total membership on the Council to which the producers in the area of that meeting are entitled by the volume produced in that region. In addition to serving as members of the Varietal Council for that major varietal category, when so appointed by the Department, those nominated at such meetings shall serve as a committee to participate in balloting, at a meeting, or preferential balloting by mail, to select from their number the members, and alternate members of the Advisory Board to represent that variety.

b. For those varietal groups or major categories whose producers have not received approval of the Board and the Department to establish a Varietal Council, the Department shall hold nomination meetings at locations convenient to the producers in each major production area. At each such meeting, the Department shall receive nominations for the proportionate number of a ten (10) person selection committee to which the producers in that area are entitled by the volume produced in that region. Those nominated as members of such selection committee shall be eligible to serve as members or alternate members of the Advisory Board representing that variety. Selection of those from that committee who are recommended for appointment as such members and alternate members shall be made by balloting of the committee members at a meeting, or by preferential balloting by mail. Those participating in the mail balloting may be either the members of the nominating committee or all

producers of record of that variety if the Board and the Department determine that a more representative selection could be made by the latter procedure.

Section D. APPOINTMENTS BY THE DEPARTMENT - FAILURE TO NOMINATE

From the nomination received, the Department shall appoint the producer and handler members and their alternates to the Advisory Board to serve for the next succeeding term of office; provided, in the event nominations are not made pursuant to Section C of this Article II, or those nominated do not provide for equitable representation of the major geographical or occupational segments of the industry, or in case nominees are found to be ineligible or unacceptable for other reasons, the Department may make appointments to the Board without regard to nominations; provided, further, that persons appointed shall be in accordance with the requirements of this Article II.

Section E. QUALIFICATIONS. Any person selected by the Department as a member or alternate member of the Advisory Board shall qualify by filing a written acceptance, Oath of Office, and other required forms with the Department within such filing period as may be established by the Department. (Amended 5/10/95)

Section F. ALTERNATE MEMBERS. An alternate member of the Advisory Board shall, in the absence of the member for whom is the alternate, sit in the place and stead of such member. When an alternate sits in the place and stead of a member, such alternate shall have all the rights, privileges, and powers of such member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act in his place and stead until a successor of such member is selected and has qualified.

Section G. VACANCIES. The Department, through appointments, may fill vacancies occasioned by the death, removal, resignation, failure to qualify, or disqualification of any member or alternate member of the Advisory Board.

In making any such appointments on the Advisory Board, the Department may take into consideration eligible persons remaining from the respective group nominated at the most recent nomination meetings, and thereafter may give consideration to any nominations made by the remaining membership of the Board.

Section H. ORGANIZATION.

1. The Board shall select a Chairman, Vice-Chairman, and other necessary officers and may adopt such rules for the conduct of its meetings as it may deem advisable.

2. The Dry Bean Advisory Board shall not perform any of its duties nor exercise any of the powers herein granted when more than four (4) vacancies of both members and their respective alternates exist. (Amended 5/10/95)

3. One-half of the voting members of the Advisory Board plus two shall constitute a quorum. Unless specified otherwise, any recommendation of the Board to the Department shall require the affirmative vote of a majority of members present.

Section I. EX OFFICIO MEMBERS AND CONSULTANTS. Each year the Board may nominate and the Department may appoint persons as ex officio members or consultants. Said ex officio members or consultants may participate in any or all deliberations of the Advisory Board; provided, that

such ex officio members or consultants shall not be counted in determining the presence of a quorum nor shall they participate in the voting.

Section J. EXPENSES. The members of the Board, including ex officio members or consultants, and of any committees provided for herein may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder, but no such member shall receive a salary in the performance of such duties.

Section K. DUTIES AND POWERS OF THE BOARD. The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

1. To administer the provisions of this Program.
2. To recommend to the Department administrative rules and regulations relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department amendments to this Program.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Program.
6. To assist the Department in the collection of information and data the Department or the Board may deem necessary to the proper administration of the Program and of the Act.
7. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions and those of the Varietal Councils and to provide the Department with copies of the minutes duly certified by an authorized officer of the Board or of the Varietal Councils. Said minutes, books, and records shall at all times be subject to examination by the Department or his duly authorized representatives.
8. To employ or retain such staff or consulting personnel as may be deemed necessary and to fix their compensation and terms of employment.
9. To conduct, when the Board deems it desirable, a survey of opinions of producers or handlers throughout the State by means of public meetings, referendum, or other satisfactory method, regarding any action being considered by the Board that would affect or concern dry bean producers or handlers or any segment thereof.
10. To review and coordinate all recommendations of Varietal Councils and if deemed appropriate, to recommend them to the Department for approval.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE ADVISORY BOARD. The members and alternate members of the Advisory Board of the Varietal Councils, ex officio members and consultants, or any committees hereunder duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any

producer or any other person for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board, Varietal Councils, committees, or employee. The liability of the Board or Varietal Councils, their committees, or employees shall be several and not joint and no member shall be liable for the default of any other member.

ARTICLE III

VARIETAL COUNCILS

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. Upon recommendation of the Board and approval of the Department, Varietal Councils may be established for any or all varietal groups or categories pursuant to Section 9 of Article I of this Program. Said Councils shall consist of not less than five (5) nor more than seven (7) members and their alternate members who shall be regularly engaged in producing at least one of the varieties involved, plus such ex officio members or consultants as the Council may recommend or as required by Section B of this Article III. All of the members and alternate members of each Varietal Council shall be appointed by the Department in accordance with the provisions of this Program; provided, no person may serve on more than one (1) of the Varietal Councils simultaneously. (Amended 5/10/95)

2. There may be an alternate member for each member of a Varietal Council selected in the same manner and for the same term as the member. Such alternate member shall, in the absence of his or her member, sit in the place and stead of the absent member or any absent member, provided that in representing an absent member the alternate living in closest proximity of the absent member shall serve. When sitting in place and stead of a member, said alternate shall have all the rights and privileges of such member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act in his place and stead until his successor is selected, appointed, and has qualified. (Amended 5/10/95)

3. Except for the initial Varietal Councils which have been established in conformity with Section C of this Article III, the terms of office of members and alternate members of any Varietal Councils that may be established pursuant to this Program shall begin on the first day of February of the year in which they are appointed and shall continue at the pleasure of the Department for a period of three (3) years and until their successors have been selected, appointed, and have qualified. (Amended 5/10/95)

4. Notwithstanding the other provisions of this Article III, if a duly established Varietal Council determines that it would assist in establishing a quorum at any meeting of that Varietal Council, it may recommend to the Board, and the Board may recommend to the Department that any alternate member of that Varietal Council who is present be authorized to vote on behalf of an absent member whose designated alternate is also absent; provided, that when more than one nonvoting alternate is present, the alternate who resides closest to the residence of the absent member will be the alternate authorized to cast that absent member's vote. (Amended 5/10/95)

Section B. EX OFFICIO OR CONSULTING MEMBERS. Each term any active Council may nominate and the Department may appoint persons as ex officio or consulting members of said Council. In addition, any active Varietal Council shall nominate for approval by the Board and appointment by the Department, from the handler members or alternate handler members of the Board, at least one handler to serve as an ex officio handler member of said Council. Ex officio or consulting members of active Varietal Councils may participate in any or all deliberations of said Council; provided, that such members shall not be counted in determining the presence of a quorum nor may they participate in the voting.

Section C. INITIAL VARIETAL COUNCILS.

1. Any Varietal Council duly established under the terms of this Program prior to its amendment in 1979, may recommend for approval of the Board and the Department establishment of a Varietal Council which shall function as the initial Varietal Council under this amended Program. Such recommendation must be presented to and approved by the Board serving in the 1978-79 marketing year and approved by the Department prior to the hearing(s) held on this amended Program. Each such recommendation shall contain the number and the names of those nominated to serve on the Council, a proposed program of activity, a budget, and either a recommended assessment rate or evidence of sufficient carryover funds to cover the proposed expenditures. When any such proposal has been duly approved, the Department shall receive at the public hearing(s) held on this amended Program nominations of producer members and alternates and may receive nominations of ex officio handler member(s) and alternate(s) eligible to serve on said initial Varietal Council. Nominations of such ex officio handler member(s) and alternate(s) may also be made by the appropriate Varietal Council either by preferences indicated at a meeting of the Council or by poll of the members of the Council without a meeting.

2. The Department shall appoint the members and alternate members on an initial Varietal Council from the nominations received at such public hearing(s)

Section D. NOMINATION AND APPOINTMENT OF SUCCEEDING MEMBERS AND ALTERNATE MEMBERS OF VARIETAL COUNCILS AND VARIETAL SELECTION COMMITTEES

1. Prior to or during the month of January 1981, and every three (3) years thereafter during which this Program is in effect, the Department shall cause meetings to be held for the purpose of receiving nominations of producers eligible to serve as members and alternate members of each Varietal Council which may be established in conformity with Article II, Section C, Subsection 2(a) of this Program. The Department may also receive nominations of ex officio handler members(s) and alternate(s) for succeeding Varietal Councils in the manner indicated in Subsection 1 of Section C of this Article III with respect to nominations of ex officio handler member(s) and alternate(s) for initial Varietal Councils. Such members and alternate members of said Councils shall serve for the next succeeding term of office, and until their successors have been nominated, appointed, and qualified.
(Amended 5/10/95)

2. Should the producers of any Major Varietal Category, including the Miscellaneous Varietal Category, elect not to establish a Varietal Council, the Department shall cause meetings to be held for the purpose of receiving nominations for members of a Varietal Selection Committee to be established

pursuant to and to carry out the responsibilities set forth in Article II, Section C, Subsection 2(b) of this Program.

3. Separate meetings shall be held for the producers of each Major Variety and of the Miscellaneous Variety and only those of record with the Department of Food and Agriculture as producers of the variety for which the meeting is held will be eligible to make nominations for the Varietal Council or the Varietal Selection Committee and participate in any balloting necessary to reduce the number nominated to the number of positions to be filled. At such meetings, insofar as practical, there shall be at least three (3) and preferably four (4) persons nominated for each member position to be appointed to a Varietal Council from that area of production. For Varietal Selection Committee positions, there shall be at least one (1) person nominated for each position to be filled from said area of production. In either case, all who are so nominated must be producers of the variety they are to represent.

4. From the nominations received, the Department shall appoint the members and alternate members to serve on each Varietal Council for the designated term of office, but no member or his alternate shall be appointed to serve concurrently on more than one council. From nominations received for positions on a Varietal Selection Committee, the Department shall appoint members to serve until their responsibilities under this Program have been completed, but no member shall be appointed to serve on more than one Selection Committee.

Section E. FAILURE TO NOMINATE. In the event nominations are not received pursuant to Section D of this Article, the Department may appoint the members and alternates of the Varietal Councils, and the members of Varietal Selection Committees for the next succeeding term of office or selection period, without regard to nominations; provided, that the persons appointed are properly representative of the persons directly affected by this Program. (Amended 5/10/95)

Section F. QUALIFICATIONS. Any person selected by the Department as a member or alternate member of a Varietal Council shall qualify by filing a written acceptance, Oath of Office, and other required forms with the Department within such filing period as may be established by the Department.

Section G. ALTERNATE MEMBERS. An alternate member of a Varietal Council shall, in the absence of the member for whom he is the alternate, sit in the place and stead of such of such member. When an alternate sits in the place and stead of a member, such alternate shall have all the rights, privileges, and powers of such member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act in his place and stead until a successor of such member is selected and has qualified.

Section H. VACANCIES. The Department, through appointments, may fill vacancies occasioned by the death, removal, resignation, failure to qualify, or disqualification of any member or alternate member of a Varietal Council. (Amended 5/10/95)

Section I. ORGANIZATION.

1. Each Varietal Council shall select a Chairman, Vice-Chairman, and other necessary officers and may adopt such rules for the conduct of its meetings as it may deem advisable.

2. A majority of the members of any Varietal Council shall constitute a quorum. Provided a quorum is present, any recommendation of any Council shall require an affirmative vote of a majority of the voting members present.

Section J. DUTIES AND POWERS OF VARIETAL COUNCILS. Each Varietal Council may investigate and recommend to the Advisory Board programs and activities peculiar or unique to the variety concerned. This authority may include but not be limited to recommending the levying of assessments on the variety or varieties covered by said Varietal Council in accordance with Article VII of this Program, and recommending programs of advertising, sales promotion, research, or any other activities authorized by this Program, and to utilize the funds generated by such assessments to carry on programs for the benefit of the variety or varieties concerned. Varietal Councils shall also have the authority to recommend expending or refunding of monies on hand from assessments and other income held for the account of the Varietal Council established for that variety under the Dry Bean Program prior to its amendment.

Section K. EXPENSES. The member of a Varietal Council, including ex officio members or consultants and members of the Board staff may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder, but no such member shall receive a salary for performance of such duties. Such expenses shall be reimbursed from the funds of said Council, except when the Advisory Board specifically authorizes reimbursement in whole or in part from the general funds of the Board.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE VARIETAL COUNCILS. The members of the Varietal Councils, ex officio members or consultants, or any committees hereunder duly appointed by the Department shall not be held responsible individually in any way whatsoever to any producer or any other person for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, or person, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of a Varietal Council or its committees. The liability of any Varietal Council, or its committees, shall be several and not joint and no member shall be liable for the default of any other member.

Section M. ADDITIONS TO OR DELETIONS FROM THE MAJOR VARIETAL CATEGORY.

1. Upon receipt from a substantial number of the producers of a variety which is classed in the Miscellaneous Varietal Category, or from producers of a new variety of dry beans not heretofore grown in commercial quantities in the State, of a request that said variety be classed as a Major Variety under this Program, the Dry Bean Advisory Board shall consider the request promptly, shall conduct a survey of opinions of producers and handlers of said variety throughout the State by means of public hearings, referendum, or other satisfactory method, and shall submit the request to a vote of the Advisory Board after a full discussion of all information obtained in the survey.

2. On a favorable vote of not less than seventy-five percent (75%) of the producer members and seventy-five percent (75%) of the handler members of the Advisory Board, the Board may recommend to the Department the addition of varieties to the definition of Major Varieties or Major Varietal Categories set forth in Article I, Section A, Subsection 9.

3. Upon receiving a recommendation from the Advisory Board to add varieties to said definition, the Department may approve such addition. Said action shall be considered a minor amendment as defined in the Act.

4. The same procedures and requirements as set forth in this Section for the addition of a variety to said definition shall apply in the event the Advisory Board receives a similarly substantiated request for the deletion of a variety or varieties from said definition; provided, that the Board may set in motion the evaluation procedures contained in Subsection 1 of this Section when the volume of production or importance of a variety has decreased to the extent that it may no longer qualify as a Major Variety.

ARTICLE 1V

RESEARCH

Section A. DISTRIBUTION AND PRODUCT UTILIZATION RESEARCH. The Advisory Board, with the approval of the Department, may conduct or arrange for any necessary and proper research studies, common to all dry bean varieties, relating to the distribution, of dry beans produced within the State. Such research may include the collection, analysis, and dissemination of data and information relating to product utilization, distribution, storage, fumigation, transportation, or selling, or any other marketing function performed for dry beans.

Section B. PRODUCTION RESEARCH. The Board may conduct or arrange for, subject to the provisions of the Act and the approval of the Department, any necessary and proper research studies, common to all dry bean varieties, relating to the production of dry beans produced within the State. Such research may include studies of cultural practices, varietal breeding and selection, pathological and entomological controls, harvesting methods, or any other such production studies, and shall be carried out in accordance with the provisions of the Act.

Section C. PROCESSING RESEARCH. The Board may conduct or arrange for, subject to the provisions of the Act and the approval of the Department, any necessary and proper research studies, common to all dry bean varieties, relating to the processing of dry beans produced within the State. Such research may include studies of warehouse handling techniques, packing methods, or any other such processing studies, and shall be carried out in accordance with the provisions of the Act.

Section D. DUTIES OF VARIETAL COUNCILS. Any Varietal Council established pursuant to this Marketing Program is hereby authorized to study the needs of the variety or varieties concerned and make recommendations to the Board with respect to desirable or necessary distribution and product utilization, production, or processing research peculiar or unique to the variety or varieties concerned including varietal improvement research.

Section E. RECOMMENDATION OF ADVISORY BOARD. The Advisory Board shall review the recommendations of any Varietal Council and if deemed satisfactory, shall recommend said research activities to the Department for approval.

Section F. APPROVAL BY DEPARTMENT. Upon recommendation by the Board of any research activities authorized by this Article to be made effective, and upon recommendation of the

expenditures required by such activities, the Department may approve such activities and may authorize the Board to incur expenditures in connection herewith.

ARTICLE V

SALES PROMOTION AND MARKET DEVELOPMENT

Section A. SALES PROMOTION AND MARKET DEVELOPMENT PLANS.

1. The Advisory Board is hereby authorized to prepare and administer, subject to the approval of the Department, plans or activities, common to all dry bean varieties, for promoting the sale of dry beans produced within the State for the purpose of maintaining present markets or creating new and larger markets for beans without reference to a particular variety or private brand or trade name; provided, that such plans or programs make no use of false or unwarranted claims in behalf of beans nor disparage the quality, value, sale, or use of any other commodity, as such commodity is defined in the Act.

2. In carrying out any sales promotion or market development plans or other activities authorized in this Article, the Board, subject to the approval of the Department, may undertake any activities consistent with the Act and this Program, which the Board and the Department determine to be appropriate in maintaining present markets or creating new and larger markets for beans.

In addition to the foregoing and as a part of its sales promotion and market development authorization, the Board may present facts to, and negotiate with State, Federal, or foreign governmental agencies on matters which affect the marketing of beans produced within the State of California.

3. In order to carry out plans or activities authorized in this Article, the Board, subject to the approval of the Department, may enter into contracts with any person qualified to render services in formulating and conducting said plans or programs, and to prepare a statement of the cost of such plans or programs.

Section B. DUTIES OF VARIETAL COUNCILS. Any Varietal Council established pursuant to this Marketing Program, is hereby authorized to study the needs of the variety or varieties concerned and make recommendations to the Advisory Board with respect to desirable or necessary sales promotion or market development plans peculiar or unique to the variety or varieties concerned.

Section C. RECOMMENDATION OF ADVISORY BOARD. The Advisory Board shall review the recommendations of any Varietal Council and if deemed satisfactory, shall recommend said plans to the Department for approval.

Section D. APPROVAL BY DEPARTMENT. Upon recommendation by the Board of any sales promotion or market development plans or activities authorized by this Article to be made effective, and upon recommendation of the expenditures required by such plans, the Department may approve such plans and may authorize the Board to incur expenditures in connection therewith.

A R T I C L E VI

GRADE REGULATIONS AND INSPECTION

Section A. RECOMMENDATION OF REGULATION.

1. Minimum grade regulations shall not be issued under this Program with respect to any dry bean variety without the specific recommendation of the Varietal Council concerned.
2. Upon recommendation of a Varietal Council and upon review and recommendation of the Advisory Board, the Department may issue seasonal minimum grade regulations for the variety or varieties of dry beans for which said Varietal council was established.
3. Seasonal minimum grade regulations may be established for any period or periods; provided, that in recommendations to the Board the issuance of such regulations, the Varietal Council and/or the Board shall use as a basis for any grade established, the United States Standards for Beans, as such Standards are defined and established by the United States Department of Agriculture, and as such Standards are applicable to said variety of dry beans.

Section B. ESTABLISHMENT OF REGULATION.

1. Based on the proper recommendation pursuant to Section A of this Article VI, and if after a review of the reports of the Board and other economic and marketing data, the Department finds that the issuance of such regulations are necessary and proper and will tend to effectuate the declared purposes of the Act, he shall issue such regulations and shall limit the preparation for market and marketing of those dry bean varieties or varietal categories for which such regulations have been established and which meet the minimum grade or grades so established.

Section C. INSPECTION.

1. Mandatory Inspection for Minimum Grades. During any period or periods in which marketing regulations relating to the minimum grade or grades for any variety or varietal category of dry beans which may be prepared for market or marketed are in effect, any such variety or varietal category of dry beans prepared for market or marketed shall be subject to inspection in accordance with minimum

grade regulations and administrative rules and regulations recommended by the Board and approved and established by the Department.

2. Optional Inspection for Certificates of Grade. In addition to the authority with respect to mandatory inspection for minimum grades specified in Subsection 1 of this Section C, the Board may employ inspectors or otherwise arrange for optional inspection services for any lot or lots of dry beans subject to the provisions of this Program. Said optional inspection services may be furnished upon request of any handler or producer and shall provide certificates of grade relating to United States grades or other grades for dry beans authorized by the Board with respect to such services. Payment for optional inspection services and administrative procedures may be recommended by the Board and approved by the Department in administrative rules or other regulations.

Section D. DUTIES OF VARIETAL COUNCILS. Any Varietal Council established pursuant to this Marketing Program is hereby authorized to study the needs of the variety or varieties concerned and make recommendations to the Advisory Board with respect to desirable or necessary grade regulations peculiar or unique to the variety or varieties concerned. A Varietal Council shall base such recommendations upon information derived from an investigation conducted by the Board or the Council and upon any other economic and marketing facts available.

Section E. RECOMMENDATION OF ADVISORY BOARD. The Advisory Board shall review the recommendations of any Varietal Council and if deemed satisfactory, shall recommend said grade regulations to the Department for approval.

Section F. APPROVAL BY DEPARTMENT. Upon recommendation by the Board of any grade regulations authorized by this Article to be made effective, and upon recommendation of the expenditures required by such regulations, the Department may approve such regulations and may authorize the Board and/or the Varietal Council concerned to incur expenditures in connection therewith.

ARTICLE VII

BUDGETS AND RATES OF ASSESSMENTS

Section A. RECOMMENDATIONS OF BUDGETS AND RATE OF ASSESSMENT BY ADVISORY BOARD. At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Advisory Board may recommend to the Department a budget of estimated income and expenditures and reserves for the administration and enforcement of this Program, including activities recommended by the Varietal Councils, and the activities authorized hereunder which are conducted for the benefit of all varieties of dry beans produced in California without respect to a particular variety. The Advisory Board shall also recommend a rate of assessment calculated to provide adequate funds to defray the proposed expenditures as set forth in said budget and subject to the limitations set forth in Section C of this Article.

Section B. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY VARIETAL COUNCILS. At the beginning of each fiscal year thereunder and as may be necessary thereafter, a Varietal Council may recommend to the Advisory Board a budget of estimated income, which income may include funds carried over from appropriate Varietal Council(s) under the predecessor program, and expenditures and reserves for the administration of and support of any

activities authorized under this Program which are conducted primarily for the benefit of the variety or varieties included in its jurisdiction. A Varietal council may also recommend a rate or rates of assessment to the Advisory Board calculated to provide adequate funds to defray the proposed expenditures as set forth in its budget. Said assessment shall be levied only upon producers of the variety or varieties involved and subject to the limitations set forth in Section C of this Article.

Section C. LIMITATIONS ON RATE OR RATES OF ASSESSMENTS.

1. Dealers. A general rate of assessment on dealers shall be uniform for all varieties or varietal categories and shall, upon recommendation of the Board and approval of the Department, be not in excess of one cent per hundredweight (\$0.01/cwt.) of beans marketed or purchased for marketing by each dealer during each marketing season. The dealer assessment shall be used exclusively in the budget of the Board to defray administrative costs and conduct programs for the benefit of all varieties of dry beans grown in California.

2. Producers.

a. Assessment Units and Limitation on Total Combined Rates of Assessment. Any assessment on producers hereunder may be levied and collected in terms of cents per hundredweight (¢/cwt.) or any other units; provided, in no event shall the Board or any Varietal Council recommend, nor shall the Department approve, the levying of a total combined rate or rates of assessment for administration and for research, advertising, sales promotion and market development on any producer of more than three-fourths of one percent (0.75%) of the average of the gross dollar value of sales of all dry beans by all producers for the previous five marketing seasons.

b. Limit on General Rate of Assessment. In no event shall the Board recommend, nor shall the Department approve, the levying of a general rate or rates of assessment for both administration and research and for advertising, sales promotion and market development uniformly applicable and common to all producers of all varieties of dry beans of more than one half of one percent (0.5%) of the average gross dollar value of sales of all dry beans by all producers for the previous five marketing seasons.

c. Limit on Varietal Rates of Assessment. In no event shall a Varietal Council or the Board recommend, nor shall the Department approve, the levying of a varietal rate of assessment for both administration and research and for advertising, sales promotion and market development on producers of the variety or varieties concerned which is more than one-fourth of one percent (0.25%) of the average of the gross dollar value of sales of the variety or varieties concerned by all producers for the previous five marketing seasons.

3. Warehousemen. There shall be no assessment rate as such levied on warehousemen hereunder. However, any costs to warehousemen in providing reports and information to the Board, in addition to the costs of collecting and remitting by warehousemen of assessments levied on producers and dealers, shall be considered as costs in lieu of assessments levied on warehousemen.

Section D. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT BY THE DEPARTMENT. If the Department finds that the recommended budgets and the combined rate or

rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Program, he may approve such budgets and rates; provided, however, that in no event shall such combined general and varietal rates of assessment exceed three-fourths of one percent (0.75%) of the average of the gross dollar value of sales of all dry beans by all producers for the previous five marketing seasons.

Section E. PAYMENT AND COLLECTION OF ASSESSMENTS.

1. The Board shall recommend for approval by the Department procedures as necessary to assure the collection of assessment on all lots of beans marketed. Each producer and dealer shall be liable for his proportionate share of any assessments recommended by the Board and fixed by the Department; provided, that no producer shall be assessed more than once on any lot of dry beans or portion thereof marketed by said producer and; provided, further, that no dealer shall be assessed more than once on any lot of dry beans or portion thereof received and handled by said dealer.

2. To facilitate collection of assessments, the Department may require either the warehouseman or the first handler agent designated for such purpose by the producer to collect and remit to the Department, (1) the assessment(s) on the producer on all dry beans received, cleaned, sorted, stored, or otherwise prepared for market by warehousemen or by such agents for producers, and (2) the assessment on the dealer to whom the beans were first sold. The Department shall verify that proper payment has been made by warehousemen and by such agents, for and on behalf of producers and dealers. Such assessments may either be added to the invoice for services rendered by warehousemen or producers or dealers or deducted from monies owed to producers by the first handler agent designated for such purpose by the producer.

3. Although for convenience of collection, assessment procedures hereunder call for collection by warehousemen or designated agents for producers, any assessment levied hereunder shall constitute a personal debt of every producer or dealer so assessed and shall be due and payable to the Department upon demand at such times and in such manner and amounts as the Department may prescribe by administrative rules and regulations or otherwise. The manner of collection may include estimated (or preliminary) and final weights or gross dollar values and adjustments as necessary for correct assessment collections.

4. In the event of failure by any person to pay any assessment payable hereunder, the Department may file a complaint against such person in a State court of competent jurisdiction for the collection thereof pursuant to the provisions of Section 58929 of the Act. Pursuant to the provisions of Section 58930 of the Act, the Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such collection, any such producer or handler shall pay to the Department a penalty of five percent (5%) for each thirty (30) days of the unpaid balance for each thirty (30) days the assessment is unpaid, prorated over the days unpaid, commencing thirty (30) days after notice has been given to such producer or handler of his failure to pay the assessment on the date required, unless the Department determines to his satisfaction, that such failure to pay is due to reasonable cause beyond the producer's or handler's control. Such penalty shall not exceed fifty percent (50%) of the total amount of the assessment due.

Section F. REFUNDS. Any money collected as assessments during a marketing season and not expended in connection with this Program may, at the discretion of the Department, be refunded after the close of any marketing season upon a pro rata basis to all persons from whom assessments were collected; or all or a portion of such money as may be recommended by the Board and approved by the Department may be carried over into the next marketing season if the Department finds that such money may be required in defraying the costs of this Program in such succeeding season.

Section G. BONDS. The Department may require that any and all persons handling substantial funds collected pursuant to the provisions of this Program shall execute and deliver to the Department a bond or bonds in such amount as the Department may designate with surety thereon satisfactory to the Department conditioned upon the faithful performance of the duties of such person pursuant to the provisions of this Program.

ARTICLE VIII

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or his duly authorized or designated representative, such information as may be, from time to time, requested by them relating to operations under this Program and shall permit the inspection by said Department, or his duly authorized or designated representatives, of such portions of such books and records as relate to operations under said Program.

Section B. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be by him disclosed to any other person save to a person with Like right to obtain the same or any attorney employed by the Department or the Advisory Board to give legal advice thereupon or by court order.

Section C. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by him.

Section D. REPORTS AND INFORMATION TO THE BOARD. In addition to such reports and information as are provided for herein with respect to collection of assessments levied on producers and dealers, upon request of the Board and approval of the Department, each warehouseman shall furnish to the Board such reports and information, in such manner and at such times as deemed necessary by the Board and the Department, to enable the Board to perform its duties and exercise its

powers in the proper administration and enforcement of this Program in accordance with, and to carry out, the provisions of this Program and the declared purposes of the Act. Any costs to warehousemen in providing such additional reports and information shall be considered as costs in lieu of assessments levied on warehousemen.

ARTICLE IX

APPEALS

Section A. APPEALS. Any person affected by this Program may petition the Department to review any order or decision of the Advisory Board or any of its subcommittees. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL. Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of said Advisory Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any order or decision upon which an appeal is taken.

ARTICLE X

AGENTS

Section A. AGENTS. The Department may, by designation in writing, name any person or persons, including officers or employees of the California Department of Food and Agriculture, to act as his agent or agents, with respect to any provision of this Program.

ARTICLE XI

RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Unfair Trade Act, Section 16600 of the Business and Professions Code, or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Program and in furtherance of the purposes and provisions of the Act, shall be a complete defense to such action or proceeding.

ARTICLE XII

SEPARABILITY

Section A. SEPARABILITY. If any section, sentence, clause, or part of this Program is for any reason held to be invalid or unconstitutional, or the applicability thereof to any person, circumstance, or thing is held to be invalid or unconstitutional, such decision shall not affect the remaining portions of this Program. The Department and the signatories to the assents or referendum ballots to this Program

hereby declare that he would have issued this Program and each sentence, section, clause, or part thereof, and each of the signatories to the assents or referendum ballots in favor would have assented or voted in favor of or to each sentence, section, clause, or part thereof, despite the fact that one or more sections, sentences, clauses, or parts thereof be declared invalid or unconstitutional.

ARTICLE XIII

RULES AND REGULATIONS

Section A. SEASONAL MARKETING REGULATIONS. Upon recommendation of the Advisory Board, the Department may, in accordance with the provisions of the Ace, establish such seasonal marketing regulations as may be necessary to carry out the purposes and attain the objectives of the Marketing Program and of the Act. Notice of any such seasonal marketing regulations shall be given to all producers and handlers directly affected in the manner and within the time required as specified in the applicable sections of this Marketing Program or as specified in any administrative rules and regulations made effective pursuant to this Marketing Program.

Section B. ADMINISTRATIVE RULES AND REGULATIONS. Upon recommendation by the Board, the Department may, in accordance with the provisions of the Act, establish such administrative rules and regulations as may be necessary to carry out the purposes and attain the objectives of the Program and of the Act. The provisions of Section 59111 of the Act relating to posting and mailing of notice and time of taking effect shall be applicable to any administrative rule and regulation established pursuant to this Article.

ARTICLE XIV

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME. This Program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department, or by operation of law in accordance with the provisions of the Act.

Section B. TERMINATION. Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Department shall suspend or terminate this Program, or any provision hereof, whenever he finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 of Chapter 1, Division 21 of said Code, that this Program, or any provision hereof, is contrary to or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restrictions therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department shall also suspend the provisions or terminate this Program in accordance with the provisions of Sections 59082, 59084, or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT. Unless otherwise expressly provided for in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of the Program issued by the Department shall either (a) affect,

waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Program, not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Department or any person with respect to any such violation; or (d) affect any liabilities pursuant to the provisions of this Program.